Supreme Court, U.S.
FILED
DEC 6 - 2004
OFFICE OF THE CLERK

(4)

No. 04-79

IN THE

Supreme Court of the United States

MARIA DEL ROSARIO ORTEGA, SERGIO BLANCO, by themselves and representing minors BEATRIZ BLANCO-ORTEGA AND PATRIZIA BLANCO-ORTEGA,

Petitioners,

v.

STAR-KIST FOODS, INC,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF FOR PETITIONERS

FREDDIE PEREZ-GONZALEZ
FREDDIE PEREZ-GONZALES & ASSOC., P.S.C.
Home Mortgage Plaza
4th Floor, Suite 433
Hato Rey, PR 00918
(787) 751-4334

ROBERT H. KLONOFF
UNIVERSITY OF MISSOURI KANSAS CITY SCHOOL OF LAW
500 East 52nd Street
Kansas City, MO 64110

DONALD B. AYER
(*Counsel of Record*)
MICHAEL S. FRIED
CHRISTIAN G. VERGONIS
JASON J. JARVIS
CHARLES T. KOTUBY, JR.
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
(202) 879-3939

Counsel for Petitioners

December 6, 2004

QUESTION PRESENTED

Whether, in a civil diversity action in which the claims of one plaintiff meet the amount-in-controversy threshold, 28 U.S.C. § 1367 authorizes the district courts to exercise supplemental jurisdiction over the related claims of additional diverse plaintiffs who do not satisfy the amount-in-controversy requirement.

PARTIES TO THE PROCEEDING

The parties to the proceeding below are contained in the caption to this case.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF AUTHORITIES vi

OPINIONS BELOW 1

JURISDICTION 1

STATUTES AND RULE INVOLVED 1

STATEMENT OF THE CASE 4

A. Section 1367 Codified The Common-Law Doctrines Of Pendent And Ancillary Jurisdiction By Providing A New Statutory Basis For Jurisdiction Over Certain Additional Claims And Parties 4

B. The Proceedings Below 12

SUMMARY OF THE ARGUMENT 17

ARGUMENT 22

I. WHERE ONE PLAINTIFF PRESENTS STATE-LAW CLAIMS THAT SATISFY THE AMOUNT-IN-CONTROVERSY REQUIREMENT AND THE REQUIREMENT OF TOTAL DIVERSITY IS MET, § 1367 PLAINLY CONFERS SUPPLEMENTAL JURISDICTION OVER THE RELATED CLAIMS OF DIVERSE CO-PLAINTIFFS THAT DO NOT MEET THE JURISDICTIONAL AMOUNT 22

A. The Text Of § 1367 Embodies Clear Rules For The Application Of Supplemental Jurisdiction 22

1. Section 1367(a)'s Affirmative Grant Of Supplemental Jurisdiction Is Triggered When One Plaintiff Brings A Claim Within The District Court's Original Jurisdiction, Which, In A Diversity Case, Means His Claim Satisfies The Amount-In-Controversy Requirement And Arises In A Case Where The Parties Are Completely Diverse 23

2. Section 1367(b)'s Denial Of Supplemental Jurisdiction Over Certain Defined Claims In A Diversity Case, Where The Addition Of Such Claims "Would Be Inconsistent With The Jurisdictional Requirements Of Section 1332," Means That Such Claims May Not Be Added To The Case If They Would Destroy Complete Diversity 26

3. Section 1367(b) Creates No Exceptions From The Supplemental Jurisdiction Relating To Claims By Defendants 29

4. Section 1367(b) Forecloses Supplemental Jurisdiction Over Claims By Existing Plaintiffs Against Newly Added Defendants, Or By Newly Added Plaintiffs Against Any Defendants, Where The Resulting Line-Up Of Plaintiffs And Defendants Would Lack Complete Diversity 30

B. Under The Straightforward Reading Of § 1367, The District Court Had Supplemental Jurisdiction Over The Claims Of Beatriz's Family Members 35

II. ALTERNATIVE INTERPRETATIONS OF § 1367 DENYING SUPPLEMENTAL JURISDICTION ON THE FACTS OF THIS CASE CANNOT BE RECONCILED WITH THE WORDS OF THE STATUTE 36

III. THE NATURAL READING OF § 1367 PROMOTES JUDICIAL ECONOMY WHILE PRESERVING THE RULE OF COMPLETE DIVERSITY 42

IV. THE LEGISLATIVE HISTORY PROVIDES NO JUSTIFICATION FOR REWRITING § 1367 IN THE MANNER ADVOCATED BY RESPONDENT AND THE COURT BELOW 46

CONCLUSION 50

TABLE OF AUTHORITIES

Page

Cases

Aetna Cas. & Sur. Co. v. Spartan Mech. Corp., 738 F. Supp. 664 (E.D.N.Y. 1990) 9
Aldinger v. Howard, 427 U.S. 1 (1976) 8, 11, 40
Almenares v. Wyman, 453 F.2d 1075 (2d Cir. 1971) 6
Am. Fiber & Finishing, Inc. v. Tyco Healthcare Group, LP, 362 F.3d 136 (1st Cir. 2004) 33
Astor-Honor, Inc. v. Grosset & Dunlap, Inc., 441 F.2d 627 (2d Cir. 1971) 6
Beautytuft, Inc. v. Factory Ins. Ass'n, 431 F.2d 1122 (6th Cir. 1970) 6
Bedroc Ltd. v. United States, 124 S. Ct. 1587 (2004) 46
Bernstein v. Lind-Waldock & Co., 738 F.2d 179 (7th Cir. 1984) 8
Caterpillar Inc. v. Lewis, 519 U.S. 61 (1996) 30, 31
Caterpillar Inc. v. Williams, 482 U.S. 386 (1987) 41
City of Chicago v. Int'l College of Surgeons, 522 U.S. 156 (1997) 23, 24, 26, 35, 37, 41
Clark v. Paul Gray, Inc., 306 U.S. 583 (1939) 8, 14-16, 49
Clinton v. City of New York, 524 U.S. 417 (1998) 42
Community Coffee Co. v. M/S Kriti Amethyst, 715 F. Supp. 772 (E.D. La. 1989) 9
Corp. of New Orleans v. Winter, 14 U.S. (1 Wheat.) 91 (1816) 24-25
Dewey v. West Fairmont Gas Coal Co., 123 U.S. 329 (1887) 5
Estate of Alvarez v. Donaldson Co., 213 F.3d 993 (7th Cir. 2000) 33
Eze v. Yellow Cab Co., 782 F.2d 1064 (D.C. Cir. 1986) (per curiam) 29

TABLE OF AUTHORITIES
(Continued)

Page

Finley v. United States,
490 U.S. 545 (1989) 9-11, 14, 38-40, 48
Freeman v. Howe,
65 U.S. (24 How.) 450 (1861) 5
Gibson v. Chrysler Corp.,
261 F.3d 927 (9th Cir. 2001) 49
Grupo Dataflux v. Atlas Global Group, L.P.,
124 S. Ct. 1920 (2004) 33
Haddon Township Bd. of Educ. v. N.J. Dep't of Educ., 476 F. Supp. 681 (D.N.J. 1979) 6
Hatridge v. Aetna Cas. & Sur. Co.,
415 F.2d 809 (8th Cir. 1969) 6
Hensgens v. Deere & Co.,
833 F.2d 1179 (5th Cir. 1987) 33
Hibbs v. Winn, 124 S. Ct. 2276 (2004) 27
Holmes Group, Inc. v. Vornado Air Circulation Sys., Inc., 535 U.S. 826 (2002) 41
Hurn v. Oursler, 289 U.S. 238 (1933) 5
Indus. Inv. Dev. Corp. v. Mitsui & Co.,
671 F.2d 876 (5th Cir. 1982), *vacated on other grounds*, 460 U.S. 1007 (1983) 29
Ingram v. CSX Transp., Inc.,
146 F.3d 858 (11th Cir. 1998) 33
J.M. Res. Inc. v. Petro-Pak Res. Ltd.,
581 F. Supp. 629 (D. Colo. 1984) 7
Jacobson v. Atlantic City Hosp.,
392 F.2d 149 (3d Cir. 1968) 6
Lamie v. United States Trustee,
124 S. Ct. 1023 (2004) 42
Leather's Best, Inc. v. S.S. Mormaclynx,
451 F.2d 800 (2d Cir. 1971) 6
Leonhardt v. W. Sugar Co.,
160 F.3d 631 (10th Cir. 1998) 15, 37, 38

TABLE OF AUTHORITIES
(Continued)

Page

Meritcare, Inc. v. St. Paul Mercury Ins. Co.,
166 F.3d 214 (3d Cir. 1999) 15, 37, 38
Moor v. Alameda County, 411 U.S. 693 (1973) 6
Moore v. N.Y. Cotton Exch., 270 U.S. 593 (1926) 5
Newman-Green, Inc. v. Alfonzo-Larrain,
490 U.S. 826 (1989) 25
Owen Equip. & Erection Co. v. Kroger,
437 U.S. 365 (1978) 7-8, 10-11, 30-32, 44
Payne v. Goodyear Tire & Rubber Co.,
229 F. Supp. 2d 43 (D. Mass. 2002) 49
Peninsular Iron Co. v. Stone, 121 U.S. 631 (1887) 24
Rosmer v. Pfizer Inc., 263 F.3d 110 (4th Cir. 2001) 49-50
Shannon v. United States,
417 F.2d 256 (5th Cir. 1969) 6
St. Paul Mercury Indem. Co. v. Red Cab Co.,
303 U.S. 283 (1938) 13
State Farm Fire & Cas. Co. v. Tashire,
386 U.S. 523 (1967) 30
Stone v. Stone, 405 F.2d 94 (4th Cir. 1968) 6
Strawbridge v. Curtiss, 7 U.S. (3 Cranch)
267 (1806) 6, 7, 9, 11, 16, 18, 24, 45
Stromberg Metal Works, Inc. v. Press
Mech., Inc., 77 F.3d 928 (7th Cir. 1996) 14
Supreme Tribe of Ben-Hur v. Cauble,
255 U.S. 356 (1921) 7, 47, 50
Trimble v. Asarco, Inc.,
232 F.3d 946 (8th Cir. 2000) 37
United Mine Workers v. Gibbs,
383 U.S. 715 (1966) 5, 7, 26, 34, 40, 43, 45, 48
W. Va. Univ. Hosps., Inc. v. Casey,
499 U.S. 83 (1991) 42
Wisc. Dep't of Corrections v. Schacht,
524 U.S. 381 (1998) 24, 28, 38

TABLE OF AUTHORITIES
(Continued)

Page

Zahn v. Int'l Paper Co., 414 U.S. 291 (1973) 8, 10, 16, 25, 39-40, 47, 48, 50

Statutes and Rules

28 U.S.C. § 1254 1
28 U.S.C. § 1331 ..... 8, 24
28 U.S.C. § 1332 ..... 3, 12-13, 17-21, 24, 27, 31-32, 34, 43-46
28 U.S.C. § 1367 ..... 1-4, 10-11, 14-23, 25-50
28 U.S.C. § 1441 ..... 15, 21, 40-41
28 U.S.C. § 1983 8
Fed. R. Civ. P.13 ..... 29, 34
Fed. R. Civ. P.14 ..... 20, 27, 30, 34
Fed. R. Civ. P.19 ..... 16, 18, 27, 30-32, 34
Fed. R. Civ. P.20 ..... 3, 14-16, 18-20, 22, 27, 31-32, 34-35, 47
Fed. R. Civ. P.24 ..... 16, 18, 20, 27, 31-32

Legislative History Materials

H.R. Rep. No. 101-734 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6860 ..... 12, 43, 47
Hearing on H.R. 5381 and H.R. 3898 Before the Subcomm. on Courts, Intellectual Property, and the Administration of Justice of the House Comm. on the Judiciary, 101st Cong., 2d Sess. (1990) 11, 28
Pub. L. 85-554, § 1, 72 Stat. 415 (1958) 8

Other Authorities

Darrell D. Bratton, *Pendent Jurisdiction in Diversity Cases—Some Doubts*, 11 San Diego L. Rev. 296 (1974) 6, 7, 45
Christopher M. Fairman, *Abdication to Academia: The Case of the Supplemental Jurisdiction Statute, 28 U.S.C. § 1367*, 19 Seton Hall Legis. J. 157 (1994) 10, 11
Federal Judicial Code Revision Project (ALI, Tentative Draft No. 2, 1998) 4, 44, 46

TABLE OF AUTHORITIES
(Continued)

Page

William H. Fortune, *Pendent Jurisdiction—The Problem of "Pendenting Parties,"* 34 U. Pitt. L. Rev. 1 (1972).....5, 7, 40, 45
Richard D. Freer, *Toward a Principled Statutory Approach to Supplemental Jurisdiction in Diversity of Citizenship Cases,* 74 Ind. L.J. 5 (1998).....32
Richard A. Matasar, *A Pendent and Ancillary Jurisdiction Primer: The Scope and Limits of Supplemental Jurisdiction,* 17 U.C. Davis L. Rev. 103(1983).....4, 5, 6, 43
Thomas M. Mengler, *The Demise of Pendent and Ancillary Jurisdiction,* 1990 BYU L. Rev. 247 .....9, 45
Note, *Diversity Requirements in Multi-Party Litigation,* 58 Colum. L. Rev. 548 (1958).....7, 45
James E. Pfander, *Supplemental Jurisdiction and Section 1367: The Case for a Sympathetic Textualism,* 148 U. Pa. L. Rev. 109 (1999) 15, 38-39, 45
James E. Pfander, *The Simmering Debate Over Supplemental Jurisdiction,* 2002 U. Ill. L. Rev. 1209 38
Report of the Federal Courts Study Committee (1990).10, 48
Report to the Federal Courts Study Comm. of the Subcomm on the Role of the Federal Courts and Their Relationship to the States (1990), *reprinted in* 1 Federal Courts Study Comm., *Working Papers and Subcommittee Reports* (1990) 4-5, 10, 45, 48
Thomas D. Rowe, Jr. *et al.*, *A Coda on Supplemental Jurisdiction,* 40 Emory L.J. 993 (1991)..... 28-29, 49

TABLE OF AUTHORITIES
(Continued)

Page

Thomas D. Rowe Jr. *et al.*, *Compounding or Creating Confusion About Supplemental Jurisdiction? A Reply to Professor Freer*, 40 Emory L.J. 943 (1991) 32, 49

2A Norman J. Singer, *Statutes and Statutory Construction* (rev. 6th ed. 2000) 27

13B Charles Alan Wright *et al.*, *Federal Practice and Procedure* (2d ed. 2003) 14

Charles Alan Wright, *The Law of Federal Courts* (5th ed. 1994) 25

Charles Alan Wright & Mary Kay Kane, *Law of Federal Courts* (6th ed. 2002) 47

BRIEF FOR PETITIONERS

The supplemental-jurisdiction statute sets out determinate rules defining federal-court jurisdiction over nonfederal claims where at least one claim in the case is within the original jurisdiction of the federal courts. In a diversity case, where the parties named in the complaint satisfy the requirement of complete diversity and at least one plaintiff presents claims satisfying the amount-in-controversy requirement, those rules unambiguously confer supplemental jurisdiction over the related claims of other diverse plaintiffs who are voluntarily joined in the complaint under Rule 20, whether or not their claims satisfy the amount-in-controversy requirement. This result is not only compelled by the text of the statute, but forms part of a sensible set of policies embodied in the statute as a whole, which allows efficient joinder of related claims and parties, while preserving the requirement of complete diversity. There is no justification in policy or legislative history to contort the language of the statute, as did the court below, in order to produce a result at odds with its plain meaning.

OPINIONS BELOW

The opinion of the court of appeals is reported at 370 F.3d 124. The opinion of the district court is reported at 213 F. Supp. 2d 84, and an order of the district court denying rehearing is unreported.

JURISDICTION

The court of appeals entered judgment on June 2, 2004. The petition for writ of certiorari was filed on July 16, 2004, and granted on October 16, 2004. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES AND RULE INVOLVED

This case involves § 1367 of Title 28, United States Code, which provides in pertinent part:

> (a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in

any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

This case also involves § 1332 of Title 28, United States Code, which provides in pertinent part:

> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—
>
> (1) citizens of different States; . . . .

This case also involves Rule 20 of the Federal Rules of Civil Procedure, which provides in pertinent part:

> **(a) Permissive Joinder.** All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons (and any vessel, cargo or other property subject to admiralty process in rem) may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

STATEMENT OF THE CASE

A. Section 1367 Codified The Common-Law Doctrines Of Pendent And Ancillary Jurisdiction By Providing A New Statutory Basis For Jurisdiction Over Certain Additional Claims And Parties

The supplemental-jurisdiction statute, 28 U.S.C. § 1367, represents the first legislative effort to codify the judicially created doctrines of pendent and ancillary jurisdiction. Historically, these doctrines have permitted the federal courts to exercise jurisdiction over legal claims not otherwise within the courts' statutory grants of subject-matter jurisdiction, when such "supplemental" claims relate in some specified degree to other jurisdictionally sufficient claims contained in the action.

In the traditional nomenclature, pendent jurisdiction refers to jurisdiction over additional claims contained in the plaintiff's complaint, while ancillary jurisdiction refers to jurisdiction over claims subsequently added to an action by a defendant or by a person, such as an intervenor or a third-party defendant, not a party to the original complaint. *See Report to the Federal Courts Study Comm. of the Subcomm. on the Role of the Federal Courts and Their Relation to the States* 546 (1990) [hereinafter *Federal Courts Study Subcommittee Report*], *reprinted in* 1 Federal Courts Study Comm., *Working Papers and Subcommittee Reports* (1990); Richard A. Matasar, *A Pendent and Ancillary Jurisdiction Primer: The Scope and Limits of Supplemental Jurisdiction*, 17 U.C. Davis L. Rev. 103, 104 n.1, 117 & nn.57-58 (1983); *Federal Judicial Code Revision Project* xxii-xxiii (ALI, Tentative Draft No. 2, 1998) [hereinafter *ALI Tentative Draft No. 2*]. Within the category of pendent jurisdiction, pendent-claim jurisdiction involves additional claims by or against the same parties litigating the jurisdictionally sufficient claims, and pendent-party jurisdiction involves additional claims by or against additional parties named in the

complaint. *See Federal Courts Study Subcommittee Report*, *supra*, at 546; William H. Fortune, *Pendent Jurisdiction—The Problem of "Pendenting Parties,"* 34 U. Pitt. L. Rev. 1, 1, 4-5 (1972).

Prior to the enactment of § 1367, no act of Congress authorized the district courts to exercise jurisdiction over claims based solely on their relationship to a case pending in federal court. Nevertheless, in an effort to avoid requiring parties to litigate related claims in different fora, this Court had, by the early part of the twentieth century, endorsed the exercise of pendent and ancillary jurisdiction over such claims in limited circumstances. *See, e.g.*, *Hurn v. Oursler*, 289 U.S. 238 (1933) (pendent claims seeking relief for same wrong); *Moore v. N.Y. Cotton Exch.*, 270 U.S. 593 (1926) (compulsory counterclaims); *Dewey v. West Fairmont Gas Coal Co.*, 123 U.S. 329, 333 (1887) (defendant's related claims against third-party defendant); *Freeman v. Howe*, 65 U.S. (24 How.) 450, 460 (1861) (intervention of party asserting claim to property held by court).

Two mid-century developments heralded a more expansive view of pendent and ancillary jurisdiction. First, the adoption in 1938 of the Federal Rules of Civil Procedure provided new mechanisms by which parties and claims could be added to a civil action and, therefore, new opportunities to test the scope of the judge-made doctrines of ancillary and pendent jurisdiction. *See* Matasar, *supra*, 17 U.C. Davis L. Rev. at 121 & n.81. Then, in *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966), this Court held that the federal courts may exercise jurisdiction over all pendent claims that derive from the same nucleus of operative fact as the jurisdictionally proper claims, such that a plaintiff would ordinarily expect to try both sets of claims in one judicial proceeding. *Id.* at 725.

Although *Gibbs* dealt only with jurisdiction over pendent claims, the lower courts seized on the decision to permit more expansive exercises of jurisdiction over nonfederal

claims asserted by or against pendent parties. *See Moor v. Alameda County*, 411 U.S. 693, 713-14 (1973) ("numerous decisions throughout the courts of appeals since *Gibbs* have recognized the existence of judicial power to hear pendent claims involving pendent parties"); Matasar, *supra*, 17 U.C. Davis L. Rev. at 158 & nn.267-68; Darrell D. Bratton, *Pendent Jurisdiction in Diversity Cases — Some Doubts*, 11 San Diego L. Rev. 296, 297 & n.6 (1974). Thus, following *Gibbs*, pendent-party jurisdiction was asserted in federal-question cases to allow the joinder in the complaint of additional federal-law claims that fell below the then-extant amount-in-controversy requirement,[1] as well as state-law claims over which the court had no independent jurisdiction (either because of lack of diversity between the parties, failure to meet the required amount-in-controversy, or both).[2] Similarly, in diversity cases, pendent-party jurisdiction was routinely invoked to permit the joinder in the complaint of additional state-law claims asserted by or against additional *diverse* parties where the joined claims fell below the amount-in-controversy threshold.[3] In light of the complete-diversity rule of *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806), however, the use of pendent-party jurisdiction to

---

[1] *See, e.g., Almenares v. Wyman*, 453 F.2d 1075, 1083 (2d Cir. 1971); *Haddon Township Bd. of Educ. v. N.J. Dep't of Educ.*, 476 F. Supp. 681, 686-88 (D.N.J. 1979).

[2] *See, e.g., Astor-Honor, Inc. v. Grosset & Dunlap, Inc.*, 441 F.2d 627, 629-30 (2d Cir. 1971); *Shannon v. United States*, 417 F.2d 256, 263 (5th Cir. 1969); *cf. Leather's Best, Inc. v. S.S. Mormaclynx*, 451 F.2d 800, 809-11 (2d Cir. 1971) (pendent-party jurisdiction over state-law claims in case arising under admiralty jurisdiction).

[3] *See, e.g., Beautytuft, Inc. v. Factory Ins. Ass'n*, 431 F.2d 1122, 1128 (6th Cir. 1970); *Hatridge v. Aetna Cas. & Surety Co.*, 415 F.2d 809, 816-17 (8th Cir. 1969); *Stone v. Stone*, 405 F.2d 94, 96-98 (4th Cir. 1968); *Jacobson v. Atlantic City Hosp.*, 392 F.2d 149, 152-55 (3d Cir. 1968).

join claims by and against additional *non-diverse* parties was "not . . . well-received."[4]

The lower courts also continued to exercise ancillary jurisdiction over claims added to lawsuits by defendants and third parties. But just as pendent-party jurisdiction was denied in the context of non-diverse pendent parties, it was generally accepted that ancillary jurisdiction ought not to be exercised in circumstances that enabled plaintiffs to circumvent the complete-diversity requirement of *Strawbridge* by relying on ancillary jurisdiction to assert claims that, due to incomplete diversity, could not have been included in the complaint. *See* Bratton, *supra*, 11 San Diego L. Rev. at 306-13 (discussing limitations on ancillary jurisdiction that prevent violation of the complete-diversity rule "through indirection"); Note, *Diversity Requirements in Multi-Party Litigation*, 58 Colum. L. Rev. 548 (1958) (surveying pre-*Gibbs* case law and concluding that the doctrine of ancillary jurisdiction is and ought to be applied in diversity actions in such a way as to prevent plaintiffs from circumventing the complete-diversity requirement). *But see Supreme Tribe of Ben-Hur v. Cauble*, 255 U.S. 356 (1921) (endorsing ancillary jurisdiction over claims of non-diverse absent class members). This Court endorsed such a limitation on ancillary jurisdiction in *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365 (1978), when it rejected the exercise of jurisdiction over ancillary state-law claims filed by a plaintiff against an impleaded non-diverse

---

[4] *J.M. Res. Inc. v. Petro-Pak Res. Ltd.*, 581 F. Supp. 629, 630-31 (D. Colo. 1984); *see also* Fortune, *supra*, 34 U. Pitt. L. Rev. at 18 (criticizing decisions that failed to distinguish between claims falling below the jurisdictional amount and those involving the addition of non-diverse parties); Bratton, *supra*, 11 San Diego L. Rev. at 313 (arguing that, in view of the complete-diversity requirement, "pendent jurisdiction is not appropriate as to claims by or against non-diverse persons").

third-party defendant on the ground, among others, that the exercise of such jurisdiction would enable plaintiffs to evade the requirement of complete diversity by omitting non-diverse defendants from the complaint and asserting claims against them after their anticipated impleader. *Id.* at 373-77.

This Court also responded to the lower-court rulings extending *Gibbs* with several decisions restraining, in certain respects, the exercise of pendent-party and ancillary jurisdiction where such jurisdiction had not been authorized by Congress. Thus, in *Zahn v. International Paper Co.*, 414 U.S. 291 (1973), the Court reaffirmed (and extended to the class-action context) the pre-*Gibbs* rule of *Clark v. Paul Gray, Inc.*, 306 U.S. 583 (1939), which had prohibited the exercise of jurisdiction over pendent-party claims that did not satisfy the amount-in-controversy requirement. *Zahn*, 414 U.S. at 294-96.[5] Then, in *Aldinger v. Howard*, 427 U.S. 1 (1976), a federal-question case, the Court rejected the exercise of jurisdiction over state-law claims against a pendent-party defendant where the defendant fell outside the class of persons liable under the substantive federal statute, 42 U.S.C. § 1983, from which federal-court jurisdiction derived. 427 U.S. at 16-18; *see also Kroger*, 437 U.S. at 367-68.

These decisions cast serious doubt on the continuing validity of judge-made supplemental-jurisdiction doctrines, *see, e.g., Bernstein v. Lind-Waldock & Co.*, 738 F.2d 179, 187 (7th Cir. 1984) ("pendent party jurisdiction is an embattled concept these days"), and the other shoe dropped

---

[5] Although *Zahn* was a diversity case, nothing in the Court's opinion suggested that its holding did not apply equally to federal-question cases, which at the time also had an amount-in-controversy requirement. *See* Pub. L. 85-554, § 1, 72 Stat. 415 (1958) (current version at 28 U.S.C. § 1331). Indeed, the Court in *Zahn* relied heavily on *Clark*, which was a federal-question case. *See* 306 U.S. at 585-86 & n.1.

with this Court's decision in *Finley v. United States*, 490 U.S. 545 (1989). In *Finley*, the Court ruled that the district courts were not authorized to assert pendent-party jurisdiction over state-law claims in a federal-question case, even if the federal claim was within the exclusive jurisdiction of the federal courts. Noting that the Court's "cases do not display an entirely consistent approach with respect to the necessity that jurisdiction be explicitly conferred," and noting further that "[w]hatever we say regarding the scope of jurisdiction conferred by a particular statute can of course be changed by Congress," the Court made clear "that a grant of jurisdiction over claims involving particular parties does not itself confer jurisdiction over additional claims by or against different parties." *Id.* at 556.

Finley was clearly the death knell for pendent-party jurisdiction, and the Court's emphatic statements concerning the need for statutory authorization before jurisdiction could be asserted led several courts and commentators to fear that the holding also imperiled previously accepted exercises of ancillary jurisdiction. *See, e.g., Aetna Cas. & Sur. Co. v. Spartan Mech. Corp.*, 738 F. Supp. 664, 675 (E.D.N.Y. 1990) (holding that *Finley* precluded the exercise of ancillary jurisdiction over claims for contribution by a defendant against an impleaded third-party defendant); *Community Coffee Co. v. M/S Kriti Amethyst*, 715 F. Supp. 772, 773 (E.D. La. 1989) (same); Thomas M. Mengler, *The Demise of Pendent and Ancillary Jurisdiction*, 1990 BYU L. Rev. 247, 259. This in turn led to calls for Congress to provide for a wholesale codification of the common-law doctrines of pendent-claim, pendent-party and ancillary jurisdiction. *See, e.g.*, Mengler, *supra*, 1990 BYU L. Rev. at 287-88. As noted above, these common-law doctrines included limitations intended to preserve the complete-diversity requirement of *Strawbridge*. *See supra* pp. 6-8 & note 4.

Prior to the decision in *Finley*, Congress had established within the Judicial Conference of the United States a fifteen-member Federal Courts Study Committee directed at

reviewing the operation of the judicial system, *see Report of the Federal Courts Study Committee* 31 (1990), and one of the subcommittees, chaired by Judge Posner, responded to *Finley* with a proposal to codify the doctrines of pendent and ancillary jurisdiction. *See Federal Courts Study Subcommittee Report*, *supra*, at 546-68. Focusing on, *inter alia*, the problem of plaintiff circumvention of the complete-diversity requirement, the Subcommittee recommended structuring the statute in such a way as to prevent such evasion, while otherwise broadly authorizing supplemental jurisdiction. *See id.* at 563-67. The Subcommittee viewed its proposal as thereby preserving the rule of *Kroger* while abrogating not only *Finley*, but *Zahn* as well. *See id.* at 561 & n.33, 563, 567; *id.* at 561 n.33 ("From a policy standpoint, [*Zahn*] makes little sense, and we therefore recommend that Congress overrule it.").

Without specifically addressing the recommendations of the Subcommittee, the Federal Courts Study Committee "recommend[ed] that Congress expressly authorize federal courts to hear any claim arising out of the same 'transaction or occurrence' as a claim within federal jurisdiction, including claims, within federal question jurisdiction, that require the joinder of additional parties." *Report of the Federal Courts Study Committee*, *supra*, at 47. Congress responded by drafting a bill that, after a series of revisions, ended up being substantially similar to the Subcommittee's proposal; this bill, with some additional modifications, ultimately became § 1367. *See* Christopher M. Fairman, *Abdication to Academia: The Case of the Supplemental Jurisdiction Statute, 28 U.S.C. § 1367*, 19 Seton Hall Legis. J. 157, 164-70 (1994) (describing the various draft bills leading to enactment of the statute).[6]

---

[6] In the course of finalizing § 1367, the drafters expressed substantial

Subsection (a) of § 1367 provides broadly for the exercise of supplemental jurisdiction over all pendent and ancillary claims, including pendent-party claims, provided that the district court has "original jurisdiction" over the action and that the claims in the action and the supplemental claims form part of the same Article III case or controversy.[7]

Subsection (b) then sets forth a series of exceptions to supplemental jurisdiction over ancillary claims in diversity cases. Specifically, where doing so would be "inconsistent" with the requirements of the diversity statute, subsection (b) prevents plaintiffs from asserting claims against persons made parties to the case under specified rules of procedure, and prohibits parties joined or intervening in the action as plaintiffs from asserting claims against defendants. As the House Report accompanying the legislation explained, these exceptions, which notably do not bar the exercise of supplemental jurisdiction over claims asserted by defendants, were designed to prevent plaintiffs from adding through

---

concern about the need to preserve the complete-diversity requirement. *See, e.g., Hearing on H.R. 5381 and H.R. 3898 Before the Subcomm. on Courts, Intellectual Property, and the Administration of Justice of the House Comm. on the Judiciary*, 101st Cong., 2d Sess. 89, 94 (1990) (prepared statement of Judge Joseph Weis, Jr.) (commenting on need for language preserving *Strawbridge*'s complete-diversity requirement); *id.* at 716, 717 (letter from Professor Thomas M. Mengler to Professor Thomas D. Rowe, Jr.) (introducing language that barred the exercise of supplemental jurisdiction over claims "when exercising supplemental jurisdiction over such claims would be inconsistent with the complete diversity requirement of section 1332"); *id.* at 723, 735 (Supp. Report of Judicial Conference Comm. on Federal-State Jurisdiction) (noting the need to preserve *Kroger* and criticizing language that would permit addition of non-diverse parties after removal).

[7] As explained in detail below, the requirement of "original jurisdiction" serves, *inter alia*, to preserve the complete-diversity requirement of *Strawbridge* by prohibiting the joinder of non-diverse parties in the complaint. *See infra* Part I(A)(1).

ancillary jurisdiction parties that, because of the complete-diversity rule, could not have been named as co-plaintiffs or co-defendants in the complaint:

> In diversity-only actions the district courts may not hear plaintiffs' supplemental claims when exercising supplemental jurisdiction would encourage plaintiffs to evade the jurisdictional requirement of 28 U.S.C. § 1332 by the simple expedient of naming initially only those defendants whose joinder satisfies section 1332's requirements and later adding claims not within original federal jurisdiction against other defendants who have intervened or joined on a supplemental basis.

H.R. Rep. No. 101-734, at 29 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6860, 6875.

B. The Proceedings Below

This is a diversity action involving personal-injury claims brought by Beatriz Blanco-Ortega, a citizen of Puerto Rico,[8] and three of her family members, also citizens of Puerto Rico, against Star-Kist Foods, Inc., a company then incorporated, and having its principal place of business, in Pennsylvania.[9] The case arises out of injuries suffered in 1990, when Beatriz, then nine years old, cut her finger on a can of Star-Kist tuna while eating lunch at school. Beatriz's injuries ultimately led to surgery on her hand, the prospect of future surgery, and minor permanent disability and scarring.

---

[8] "The word 'States', as used in [28 U.S.C. § 1332], includes . . . the Commonwealth of Puerto Rico." 28 U.S.C. § 1332(d).

[9] Because the court below found original jurisdiction over Beatriz's claims, the petitioners in this Court are Beatriz's three family members who were co-plaintiffs in the district court — Maria del Rosario-Ortega, Sergio Blanco, and Patrizia Blanco-Ortega.

In the amended complaint on which the case has gone forward, Beatriz, along with her mother, Maria del Rosario-Ortega, her father, Sergio Blanco, and her sister, Patrizia Blanco-Ortega, sued Star-Kist and its unnamed insurers. Beatriz alleged that she had suffered physical and emotional damages of not less than $900,000. In addition, each of Beatriz's family members sought emotional damages in excess of $75,000, with Beatriz's mother seeking an additional $30,000 in damages for Beatriz's past and future medical expenses.

Star-Kist moved for summary judgment on the ground that none of the plaintiffs had satisfied the $75,000 amount-in-controversy requirement needed to establish federal-court jurisdiction pursuant to § 1332. Applying the "legal certainty" test set forth by this Court in *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 288-89 (1938), and surveying recoveries in similar cases, the district court concluded that it was a legal certainty that none of the plaintiffs could prove damages in excess of $75,000. Accordingly, the district court dismissed the entire case for lack of subject-matter jurisdiction.

The plaintiffs appealed, and the First Circuit (Lynch, J.) affirmed in part and reversed in part. The court first unanimously reversed the district court on the question whether Beatriz had satisfied the amount-in-controversy requirement. The court concluded that, in light of Beatriz's permanent physical impairment and claimed pain and suffering, it could not say to a legal certainty that Beatriz could not recover a jury award larger than $75,000, and that Beatriz's claim should therefore be allowed to go forward. By contrast, the court concluded that it was a legal certainty that the emotional distress claims of Beatriz's family members (even taking into account Beatriz's mother's additional claim for Beatriz's medical expenses) did not meet the $75,000 threshold. Pet. App. 3a-10a.

Next, speaking on behalf of two judges, the court considered whether 28 U.S.C. § 1367 nevertheless permitted the district court to assert supplemental jurisdiction over the claims of Beatriz's family members. It noted that the proper resolution of this issue "is far from clear," and has deeply divided the circuit courts. It observed further that this issue has arisen in two contexts — cases, such as this one, involving the ordinary permissive joinder of multiple plaintiffs under Rule 20 of the Federal Rules of Civil Procedure, and cases involving the claims of absent class members in diversity-only class actions. Pet. App. 11a.

Confining its consideration to the first of these contexts, the court below began its analysis by reviewing the law as it existed before the enactment of § 1367 in 1990. It noted that *Clark v. Paul Gray, Inc.*, 306 U.S. 583 (1939), had required that each plaintiff in a lawsuit must separately satisfy the jurisdictional-amount requirement. The court noted further that the "impetus for Congress's adoption of § 1367 was the Supreme Court's 5-4 decision in *Finley v. United States*, 490 U.S. 545 (1989)," in which this Court had held that the district courts lack jurisdiction over pendent-party state-law claims in federal-question cases. Pet. App. 14a. But while primarily aimed at overturning *Finley*, the court below observed, § 1367's text "can be read to do more than" that — indeed, on its face, § 1367 appears to be "a jurisdictional grant of such apparent breadth" as to have "created confusion in a number of areas in which principles were thought to be well established." Pet. App. 15a (quoting 13B Charles Alan Wright *et al.*, *Federal Practice and Procedure* § 3567.2 (2d ed. 2003)).

The court stated that one such area of resulting confusion involves the continued validity of the Supreme Court's holdings that every plaintiff in a diversity case must meet the jurisdictional-amount requirement. Under one line of reasoning, adopted by the Seventh Circuit in *Stromberg Metal Works, Inc. v. Press Mechanical, Inc.*, 77 F.3d 928 (7th Cir. 1996), § 1367 has been found to overturn the

jurisdictional-amount holding of *Clark* in diversity cases because Congress failed in § 1367(b) "to include Rule 20 plaintiffs among those parties who cannot rely on supplemental jurisdiction where doing so would be inconsistent with § 1332." Pet. App. 15a. Under a second line of reasoning, which the court below ultimately adopted, *Clark* has been found to be preserved by "the requirement in § 1367(a) that the district court must first have 'original jurisdiction' over an action before supplemental jurisdiction can apply, . . . and thus [§ 1367] does not supply supplemental jurisdiction where, as in this case, only one of the named plaintiffs meets the amount in controversy." Pet. App. 16a (citing James E. Pfander, *Supplemental Jurisdiction and Section 1367: The Case for a Sympathetic Textualism*, 148 U. Pa. L. Rev. 109 (1999); *Leonhardt v. W. Sugar Co.*, 160 F.3d 631 (10th Cir. 1998); *Meritcare, Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214 (3d Cir. 1999)).

Applying this latter analysis to the facts of this case, the court reasoned that, because the district court lacked jurisdiction over the claims of Beatriz's family members under the jurisdictional principles articulated in *Clark*, it lacked "original jurisdiction" over the entire action, and the statutory prerequisite for the exercise of supplemental jurisdiction was therefore not met.[10] While this interpretation of § 1367(a) obviated the need for the court to address the exceptions set forth in § 1367(b), the court noted that its interpretation provided an explanation for the omission of Rule 20 plaintiffs from those exceptions.

---

[10] The court noted that this reading of "original jurisdiction" is supported by "the settled meaning of identical language in 28 U.S.C. § 1441, the removal statute," which has been interpreted "to prohibit removal unless the entire action, as it stands at the time of removal, could have been filed in federal court in the first instance." Pet. App. 21a.

In support of its interpretation of the statutory language, the court opined that a contrary reading of the statute would necessarily permit the permissive joinder of non-diverse plaintiffs, thereby abrogating the complete-diversity rule of *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806), a "surprising and far-reaching consequence[]" that the court did not believe Congress intended. Pet. App. 27a. Finally, the court concluded that the legislative history of § 1367 supported its conclusion that Congress did not believe that the statute would make significant changes to the law of diversity jurisdiction.

Judge Torruella dissented from the portion of the court's ruling on supplemental jurisdiction, on the ground that it "is contrary to the plain language of § 1367." Pet. App. 33a. He began his analysis by arguing that, because "*Clark* and *Zahn* stand for the same principle," the majority should have addressed the reasoning of the majority of circuits that have concluded in the class-action context that § 1367 authorizes jurisdiction over claims below the jurisdictional amount. He also asserted that if any distinction were to be drawn between the two contexts, the Rule 20 joinder situation is the stronger one for allowing supplemental jurisdiction over such claims. Pet. App. 35a-36a.

Turning to the text of the statute, Judge Torruella explained that the district court had "original jurisdiction" over Beatriz's claim within the meaning of § 1367(a) because she and Star-Kist are diverse and her claim exceeds $75,000. Therefore, the district court also had supplemental jurisdiction over the related claims of Beatriz's family members unless one of the exceptions of § 1367(b) applied. While § 1367(b) excepts claims asserted by plaintiffs made parties pursuant to Rules 19 and 24 of the Federal Rules of Civil Procedure and *against* persons made parties pursuant to, *inter alia*, Rule 20, the claims in this case were being asserted by persons made parties pursuant to Rule 20 and, accordingly, none of the exceptions applied. Judge Torruella criticized the majority's alternative approach for

misinterpreting the concept of original jurisdiction, making other provisions of § 1367 superfluous, and improperly relying on "internally contradictory" legislative history. Pet. App. 39a-45a.

SUMMARY OF THE ARGUMENT

Section 1367(a) contains an affirmative grant of supplemental jurisdiction over all claims — and parties — that are part of the same case or controversy as "any civil action of which the district courts have original jurisdiction." Section 1367(b) withdraws that grant of supplemental jurisdiction over specifically-described claims in diversity cases. These provisions allow supplemental jurisdiction over related claims, and thus avoid piecemeal litigation, but at the same time limit federal jurisdiction over claims whose inclusion would be incongruous with the underlying rationale for allowing the case into federal court in the first place.

With regard to the question in this case — whether in a diversity case where the parties are totally diverse and at least one plaintiff has claims meeting the jurisdictional amount, supplemental jurisdiction extends to the related claims of other named plaintiffs falling short of that amount — the answer is entirely clear from the statute's language. Section 1367(a)'s grant of supplemental jurisdiction is plainly triggered by the fact that, in such a totally diverse case, the claim of the plaintiff who satisfies the amount-in-controversy requirement is within the "original jurisdiction" of the district court. On that basis, § 1367(a) confers supplemental jurisdiction over all claims and parties that "form part of the same case or controversy" — *i.e.*, the claims of Beatriz's family members — unless such jurisdiction is withdrawn by the exceptions enumerated in § 1367(b), which apply when such supplemental jurisdiction "would be inconsistent with the jurisdictional requirements of § 1332." The claims at issue here are not among those exceptions, which include claims "by persons proposed to be

joined as plaintiffs under Rule 19" or "under Rule 24," but not claims by plaintiffs joined voluntarily in the complaint pursuant to Rule 20.

The court below rejected this analysis in part on the ground that "if § 1367 permits the permissive joinder of plaintiffs who cannot meet the amount-in-controversy requirement, then it also permits the joinder of non-diverse plaintiffs." Pet. App. 27a. But that is not so. This Court's cases make clear that there is a world of difference between a complaint as to which all parties are diverse and some plaintiffs but not others meet the amount-in-controversy requirement, and a complaint in which the parties lack complete diversity. In the first instance, the case is within the original jurisdiction of the district court — based on the claim of the party who satisfies all of the requirements of § 1332 — and supplemental jurisdiction is therefore triggered. In the second instance, there is no such case within the original jurisdiction, because, under *Strawbridge*, the presence of non-diverse parties destroys jurisdiction over *all* claims in the case. Thus, § 1367(a)'s grant of supplemental jurisdiction is unavailable where the parties in a complaint lack complete diversity.

Nor does § 1367 allow the complete-diversity requirement to be subverted by filing a case that meets the complete-diversity requirement, and thereafter adding non-diverse plaintiffs pursuant to the court's supplemental jurisdiction. Because the joinder of additional plaintiffs by amendment is a voluntary act of the original plaintiffs, each amended complaint offered by plaintiffs must satisfy the "original jurisdiction" threshold of § 1367(a) in order for supplemental jurisdiction to exist. A non-diverse amended complaint, just like a non-diverse initial complaint, fails to do so (because the addition of non-diverse plaintiffs destroys original jurisdiction over every claim), and thus will not support supplemental jurisdiction.

This natural reading of § 1367(a), which sensibly bars supplemental jurisdiction where a complaint lacks complete diversity but not where some parties' claims fall below the jurisdictional amount, is matched by an equally sensible natural reading of § 1367(b). On its face, that provision negates, for specified types of claims, the grant of supplemental jurisdiction, but only where the exercise of such jurisdiction "would be inconsistent with the jurisdictional requirements of section 1332." Read in one way, this qualifier to the exclusions of subsection (b) could mean that supplemental jurisdiction over the enumerated claims is unavailable except where all of the requirements of § 1332 are already satisfied as to those very claims. While petitioners would still prevail under this reading — because, being plaintiffs joined under Rule 20, their claims are not within any exception enumerated in subsection (b) — this reading of the final phrase of subsection (b) is problematic for two reasons.

First, it would give the phrase the wholly superfluous meaning that supplemental jurisdiction is unavailable except where the court already has jurisdiction over the claims under § 1332. There is obviously no point in qualifying the subsection (b) exceptions in such a manner, and the exact same result would have been achieved by simply omitting the last phrase of subsection (b) altogether.

Second, under this reading, subsection (b) would allow supplemental jurisdiction over the related claims of diverse plaintiffs joined under Rule 20 (which are not within subsection (b)'s exceptions), but not over totally diverse claims and claimants listed as exceptions in § 1367(b). There is little sense in denying supplemental jurisdiction over claims and claimants excepted in § 1367(b) which are completely diverse, while allowing such jurisdiction over the indistinguishable claims brought by plaintiffs joined under Rule 20.

In light of these difficulties (which are not implicated by the present case, but could arise in others), the phrase "when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332" is better construed to refer to situations where the exercise of supplemental jurisdiction would undermine the basis on which the court took jurisdiction of the case in the first place. Because original jurisdiction under § 1332 would be destroyed by — *i.e.*, is "inconsistent with" — the presence in the complaint of non-diverse parties, but not by the presence of diverse parties with claims that do not meet the jurisdictional amount, this language is best read to foreclose jurisdiction over the enumerated claims where, and only where, those claims are asserted by or against non-diverse parties.

So construed, the supplemental-jurisdiction statute is generally consistent with the common-law rules of pendent and ancillary jurisdiction, *see supra* pp. 5-8, and strikes a coherent balance between concerns for efficiency and concerns that supplemental jurisdiction not be used to bring cases into federal court which are incompatible with the complete-diversity rationale on which a case gets to federal court in the first place. In a diversity case, where claims arising from the same case or controversy are consistent with the requirement of total diversity, they may be pursued in the same proceeding under § 1367, even if they fall below the jurisdictional amount. Where, on the other hand, pursuit of any of the plaintiffs' claims enumerated in subsection (b)'s exception provisions would be inconsistent with the total-diversity prerequisite to jurisdiction over the original case under § 1332, supplemental jurisdiction is denied. Thus read, petitioners' claims in this case are treated no differently than identical claims of diverse plaintiffs, whether they are joined under Rule 19 or Rule 24, or are original to the case and are proceeding against diverse defendants joined under Rules 14, 19, 20 or 24.

There is no credible reading of the words of § 1367 leading to the conclusion that supplemental jurisdiction is inapplicable to the claims of Beatriz's family members on the facts of this case. All judicial efforts reaching a contrary result on similar facts have focused on § 1367(a)'s prerequisite of a case within the "original jurisdiction" of the district court, and have concluded inexplicably that no diversity jurisdiction exists, even in the presence of completely diverse parties and the claim of one plaintiff that meets the amount-in-controversy, where the claims of any other plaintiffs fall below the jurisdictional amount. Plainly original jurisdiction does exist in that circumstance and thus the supplemental jurisdiction is triggered.

No contrary conclusion is suggested by the facts that the general removal statute, 28 U.S.C. § 1441, requires a "civil action . . . of which the district courts of the United States have original jurisdiction," and has been construed to allow removal only where the entire case could have been brought in federal court. The identical phrases serve different purposes in § 1441 and § 1367. In § 1441, the entire case must be removable in order to protect the plaintiff's right to define the scope of his action. As this Court has made clear, claims within the supplemental jurisdiction authorized by § 1367 count as part of the "original jurisdiction" for purposes of § 1441. That obviously cannot be true in § 1367, where the phrase "original jurisdiction" is used differently, to denote the predicate for, not the result of, the exercise of supplemental jurisdiction.

At the end of the day, the argument for denying supplemental jurisdiction over petitioners' claims rests primarily on a sense that such a result may be inconsistent with legislative intent as expressed in fragments of legislative history. Petitioners submit, given the clarity of the statutory language supporting their position, that any reliance on legislative history in this instance is both inappropriate and unpersuasive. The legislative history most often cited in this regard does not even bear upon the factual

context of Rule 20 joinder presented here. Moreover, the reference relied upon offers no analysis of the statutory language. Indeed, as reflected in subsequent commentary by persons who played an integral role in the drafting process, there is good reason to conclude that the legislative history relied upon was an after-the-fact effort to alter the interpretation that follows clearly from the plain words of the statute.

ARGUMENT

I. WHERE ONE PLAINTIFF PRESENTS STATE-LAW CLAIMS THAT SATISFY THE AMOUNT-IN-CONTROVERSY REQUIREMENT AND THE REQUIREMENT OF TOTAL DIVERSITY IS MET, § 1367 PLAINLY CONFERS SUPPLEMENTAL JURISDICTION OVER THE RELATED CLAIMS OF DIVERSE CO-PLAINTIFFS THAT DO NOT MEET THE JURISDICTIONAL AMOUNT

A. The Text Of § 1367 Embodies Clear Rules For The Application Of Supplemental Jurisdiction

The supplemental-jurisdiction analysis under § 1367 proceeds in three steps. First, the several affirmative requirements set out in subsection (a) must be satisfied. Then, in the case of diversity actions, the supplemental claims must not fall within any of the exceptions enumerated in subsection (b). Finally, in all cases, district courts may, as a matter of discretion, choose not to exercise supplemental jurisdiction under circumstances outlined in subsection (c).

1. Section 1367(a)'s Affirmative Grant Of Supplemental Jurisdiction Is Triggered When One Plaintiff Brings A Claim Within The District Court's Original Jurisdiction, Which, In A Diversity Case, Means His Claim Satisfies The Amount-In-Controversy Requirement And Arises In A Case Where The Parties Are Completely Diverse

Section 1367(a) provides:

> Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

The threshold requirement for the exercise of supplemental jurisdiction under subsection (a) is the existence of "any civil action of which the district courts have original jurisdiction." Such a "civil action" within the federal court's "original jurisdiction" exists if *at least one claim* in the case meets the jurisdictional requirements to maintain an action in federal court. Subsection (a) makes this clear by contrasting the "claims in the action within such original jurisdiction" with the "other claims" over which supplemental jurisdiction is exercised.

Were there any doubt, the Court reaffirmed this point in *City of Chicago v. International College of Surgeons*, 522 U.S. 156 (1997), where it observed that a reading of § 1367(a) requiring *all* claims to satisfy the jurisdictional requirements in order to constitute a "civil action of which the district courts have original jurisdiction" "would effectively read the supplemental jurisdiction statute out of

the books: The whole point of supplemental jurisdiction is to allow the district courts to exercise pendent jurisdiction over claims as to which original jurisdiction is lacking." *Id.* at 167.

When at least one claim in an action arises under federal law, it is readily apparent that the "original jurisdiction" requirement of subsection (a) has been met, since the requirements of § 1331 are satisfied as to that claim, whether or not other claims are also brought as to which no jurisdictional basis can be found.

In cases where jurisdiction is predicated on diversity, the "original jurisdiction" requirement of § 1367(a) takes on added complexity, due to the requirement of complete diversity, which this Court, in *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806), found to be implicit in the diversity-jurisdiction statute. That requirement means that claims between parties of diverse citizenship are only within the jurisdiction of the federal courts if the action is completely diverse, *i.e.*, if no parties from the same State are on opposite sides of the lawsuit.

As a result of the complete-diversity requirement, it is not sufficient to establish original jurisdiction under § 1332 that a plaintiff bring claims meeting the amount-in-controversy requirement against defendants with whom his citizenship is diverse. His claims must also be brought in a suit in which all plaintiffs are diverse from all defendants. *See, e.g.*, *Wisc. Dep't of Corrections v. Schacht*, 524 U.S. 381, 389 (1998) ("Where original jurisdiction rests upon Congress' statutory grant of 'diversity jurisdiction,' this Court has held that one claim against one nondiverse defendant destroys that original jurisdiction."); *Peninsular Iron Co. v. Stone*, 121 U.S. 631, 633 (1887) (dismissing all claims where diversity was incomplete); *Corp. of New Orleans v. Winter*, 14 U.S. (1

Wheat.) 91, 94-95 (1816) (same).[11] Accordingly, where pendent-party claims contained in a complaint (including an amended complaint, *see infra* note 15) involve non-diverse parties, there is no "original jurisdiction" over any claim and, hence, no basis under § 1367(a) for asserting supplemental jurisdiction over the pendent-party claims.

By contrast, where the parties are completely diverse and at least one claim (but not necessarily all claims) meets the jurisdictional-amount requirement (currently $75,000), there is a civil action "of which the district courts have original jurisdiction."[12] *See Zahn*, 414 U.S. at 295 (dismissing only "those litigants whose claims do not satisfy the jurisdictional amount," but allowing the others to proceed where diversity was complete). Under such circumstances, therefore, the threshold requirement for supplemental jurisdiction is satisfied, and the district court may assert jurisdiction over the pendent-party claims that are consistent with complete diversity, even though they fall below $75,000.

The only other affirmative requirement of subsection (a) is that supplemental claims be "so related to [the] claims . . . within [the] original jurisdiction that they form part of the same case or controversy under Article III" of the Constitution. 28 U.S.C. § 1367(a). This relatedness requirement is satisfied whenever the supplemental claim "derive[s] from a common nucleus of operative fact" with a

---

[11] As a pragmatic matter, the Court has allowed the dismissal of dispensable non-diverse parties to *create* diversity jurisdiction over the remaining claims, *see Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 832-38 (1989), but this practice does not alter the fact that, in such circumstances, original jurisdiction was lacking in the suit as filed.

[12] In conducting the amount-in-controversy analysis, a claim can be treated as if it encompasses amounts in controversy in other claims by the same plaintiff. *See, e.g.*, Charles Alan Wright, *The Law of Federal Courts* 210 (5th ed. 1994).

claim that is within the original jurisdiction. *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966); *Int'l College of Surgeons*, 522 U.S. at 165 (the *Gibbs* test "is all the statute requires to establish supplemental jurisdiction").

2. Section 1367(b)'s Denial Of Supplemental Jurisdiction Over Certain Defined Claims In A Diversity Case, Where The Addition Of Such Claims "Would Be Inconsistent With The Jurisdictional Requirements Of Section 1332," Means That Such Claims May Not Be Added To The Case If They Would Destroy Complete Diversity

Any grant of supplemental jurisdiction over additional parties applicable to diversity cases raises a concern about the subsequent joinder of parties whose very presence is inconsistent with the diversity rationale under which the case came to federal court in the first place. While the "original jurisdiction" requirement of subsection (a) prevents the joinder of a non-diverse pendent party in the complaint, *see supra* Part I(A)(1), that provision does not by its terms prevent the subsequent joinder of, and assertion of claims by or against, non-diverse third parties. Accordingly, subsection (b) sets forth certain exceptions in cases brought solely under the diversity jurisdiction. Specifically, it provides as follows:

> (b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional

requirements of section 1332.

Understanding the nature and breadth of the exceptions thus made applicable in diversity cases to the grant of supplemental jurisdiction in § 1367(a) is a two-step process. First, one must determine what it means for the exercise of supplemental jurisdiction over such additional claims to "be inconsistent with the jurisdictional requirements of section 1332." Second, one must understand the types of claims that are excepted from supplemental jurisdiction under § 1367(b), when that first condition is satisfied.

On the first point, there are two possible interpretations of this final clause of § 1367(b). On the one hand, it could mean that supplemental jurisdiction over the specified claims is available only where the district court already has independent diversity jurisdiction over those claims. But this would mean that supplemental jurisdiction over the claims listed in (b) is available only where it is unnecessary. If that were the intended meaning, the same result could have been achieved by omitting the final clause altogether, a reading that ought to be disfavored. *See Hibbs v. Winn*, 124 S. Ct. 2276, 2286 (2004) ("rule against superfluities"); *see also* 2A Norman J. Singer, *Statutes and Statutory Construction* § 46.06, at 181-186 (rev. 6th ed. 2000).

This reading also produces several inexplicable anomalies. Supplemental jurisdiction would be allowed over small, related claims of diverse plaintiffs joined under Rule 20, but not over such claims by diverse Rule 19 or Rule 24 plaintiffs, or by plaintiffs named in the complaint against diverse defendants added under Rules 14, 19, 20, or 24. No reason appears why Congress would have wished to limit in this extreme and arbitrary way the reach of supplemental jurisdiction over diverse claims and parties all dealing with the same case or controversy.

An alternative reading of the final clause of § 1367(b) avoids these problems. The phrase "inconsistent with the jurisdictional requirements of section 1332" can be read to

foreclose supplemental jurisdiction over the claims enumerated in (b) only where the assertion of such jurisdiction would be inconsistent with diversity jurisdiction in the sense that, had the additional parties been included in the complaint, they would have destroyed the original jurisdiction over *any* case. This would occur only where the supplemental claim would add a non-diverse party, and thus alter the line-up of plaintiffs and defendants in a manner inconsistent with complete diversity. *See supra* pp. 24-25; *Schacht*, 524 U.S. at 389. Under this interpretation the final clause is not wholly superfluous. It also reconciles the statute's clear allowance of claims by diverse Rule 20 plaintiffs on the facts of this case with its treatment of the claims excepted in § 1367(b), by making clear that the enumerated exceptions apply only when the inclusion of such claims would destroy complete diversity. *See infra* Part I(A)(4).

This meaning of the last clause of (b) is supported by its drafting history. An earlier proposed version of this clause expressly excepted the enumerated claims only "when exercising supplemental jurisdiction over such claims would be inconsistent with *the complete diversity requirement* of section 1332." *Hearing on H.R. 5381 and H.R. 3898 Before the Subcomm. on Courts, Intellectual Property, and the Administration of Justice of the House Comm. on the Judiciary*, 101st Cong., 2d Sess. 716, 717 (1990) (letter from Professor Thomas M. Mengler to Professor Thomas D. Rowe, Jr.) (emphasis added). Three of the primary drafters (including both the author and the recipient of the letter proposing the initial language of the clause) have subsequently stated that the language ultimately took its current form at least in part simply to avoid "lock[ing] in the

complete diversity requirement for alienage cases,"[13] rather than to extend its scope beyond the complete-diversity component of § 1332. Thomas D. Rowe, Jr. *et al.*, *A Coda on Supplemental Jurisdiction*, 40 Emory L.J. 993, 998-99 (1991).

3. Section 1367(b) Creates No Exceptions From The Supplemental Jurisdiction Relating To Claims By Defendants

It is noteworthy that § 1367(b) does not include in its list of exceptions any claims that may be brought by a defendant who is named in the original complaint. Thus, defendants named in a diversity action may invoke the full power of supplemental jurisdiction to pursue claims relating to the same case or controversy, as permitted by the Federal Rules, without regard to whether the claims meet the jurisdictional amount or total diversity requirements.

Thus, supplemental jurisdiction exists (where it is needed) to allow defendants to counterclaim against plaintiffs pursuant to Rule 13(a) and (b), to cross claim against co-parties as allowed under Rule 13(g), and to counterclaim or cross claim against additional parties as provided for under Rule 13(h) (without regard to diversity of citizenship), provided that the claims in issue are part of the same case or controversy, as required under § 1367(a). Similarly,

---

[13] Courts traditionally have held that there is no complete diversity where both a plaintiff and defendant are aliens, even if a citizen of some state is also a party on one side or the other. *See, e.g., Eze v. Yellow Cab Co.*, 782 F.2d 1064, 1065 (D.C. Cir. 1986) (per curiam). Some courts had hinted that pendent jurisdiction could be used to ameliorate this rule. *See, e.g., Indus. Inv. Dev. Corp. v. Mitsui & Co.*, 671 F.2d 876, 880-81 n.2 (5th Cir. 1982), *vacated on other grounds*, 460 U.S. 1007 (1983). The drafters thus suggested that a reference in (b) to the requirements of § 1332 generally, without expressly mentioning complete diversity, might leave open whether such a practice is permitted.

defendants may implead third parties under Rule 14 and may join necessary parties under Rule 19, all without regard to total diversity or amount in controversy.[14] *See Caterpillar, Inc. v. Lewis*, 519 U.S. 61, 66 n.1 (1996) (noting the permissibility under § 1367 and Rule 14 of defendant in a diversity case impleading a third-party defendant who is not diverse with the plaintiff); *Kroger*, 437 U.S. at 373-77 (denying ancillary jurisdiction over plaintiff's claim against non-diverse third-party defendant, but raising no question about defendants' Rule 14 joinder of third-party defendant in the first place); *State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523, 530 (1967) (permitting incomplete diversity in the interpleader context).

4. Section 1367(b) Forecloses Supplemental Jurisdiction Over Claims By Existing Plaintiffs Against Newly Added Defendants, Or By Newly Added Plaintiffs Against Any Defendants, Where The Resulting Line-Up Of Plaintiffs And Defendants Would Lack Complete Diversity

While there are no statutory exceptions to supplemental jurisdiction over claims by defendants, there are two lists of enumerated exceptions applicable to claims brought by plaintiffs.

---

[14] However, where a defendant seeks to join an additional plaintiff as an indispensable party under Rule 19, perhaps to ensure that all claims against the defendant arising from one incident are litigated in a single proceeding, the existence of supplemental jurisdiction over claims by the new plaintiff against the defendant is governed by the language of § 1367(b) referencing claims of persons "to be joined as plaintiffs under Rule 19." *See infra* pp. 31-32. Such claims will be foreclosed if inconsistent with the complete-diversity requirement, and if that new plaintiff is really indispensable to the case, the case will be dismissed by the district court pursuant to Rule 19(b), without prejudice to the parties proceeding in a different forum.

Under the first list of 1367(b) exceptions, there can be no supplemental jurisdiction in a diversity action over claims by plaintiffs against persons made parties under Rules 14, 19, 20, or 24, where the exercise of such jurisdiction would be inconsistent with the jurisdictional requirements of § 1332. Thus, for example, where a defendant impleads a non-diverse third-party defendant under Rule 14 — which as set forth above he may do — a plaintiff is nonetheless foreclosed from pursuing claims against that newly joined third-party defendant because doing so would be inconsistent with the requirement of total diversity on which federal-court jurisdiction is predicated. In this respect, as construed by this Court, *Caterpillar*, 519 U.S. at 66 n.1, the statute incorporates the common-law rule set out in *Kroger*, 437 U.S. at 376-77.

At the same time, if a defendant impleads under Rule 14 a third-party defendant who is *diverse* to the plaintiff, the plaintiff is allowed to bring against him supplemental claims arising from the same case or controversy that do not meet the jurisdictional amount. This follows from the position advanced above, *see supra* pp. 28-29, that the last clause of § 1367(b) excludes only claims that would undermine the jurisdictional basis on which the court is able to entertain the case in the first place. Unlike claims against a non-diverse party, the pursuit of small claims against a diverse party is fully consistent with the court's continued jurisdiction over the original matter under § 1332.

The same result follows where a plaintiff seeks to bring claims against non-diverse defendants added to the case pursuant to Rules 19, 20, and 24. As set forth above, defendants are unrestricted under § 1367(b) in their ability to add parties — whether diverse or non-diverse — as allowed by Rules 19 and 20. Similarly, a new party may seek to intervene as a defendant under Rule 24(a) or (b) — whether or not he is diverse — again subject to the same case-or-controversy requirement of § 1367(a). But supplemental jurisdiction will be unavailable over claims by existing

plaintiffs against any of these parties added under Rules 19, 20, or 24 if those new parties are non-diverse, because such claims would be "inconsistent with the jurisdictional requirements of section 1332," as those words are used in § 1367(b). *Cf. Kroger*, 437 U.S. at 376 (unlike a defendant, a "plaintiff cannot complain if ancillary jurisdiction does not encompass all of his possible claims in a case such as this one, since it is he who has chosen the federal rather than the state forum and must thus accept its limitations").

The second list of exceptions in § 1367(b) provides that "claims by persons proposed to be joined as plaintiffs under Rule 19 . . . or seeking to intervene as plaintiffs under Rule 24" may not be brought under the supplemental jurisdiction when doing so "would be inconsistent with the jurisdictional requirements of section 1332." By this language, new plaintiffs who would be joined under Rule 19, or by intervention under Rule 24, are not allowed into the case to pursue claims against existing defendants if their presence would destroy complete diversity.[15]

---

[15] It has been suggested in commentary that the language of § 1367(b), by omitting any exception for persons proposed to be joined as plaintiffs under Rule 20, may leave a "gaping hole" that would allow plaintiffs to easily and transparently defeat the complete-diversity requirement. Thomas D. Rowe Jr. *et al.*, *Compounding or Creating Confusion About Supplemental Jurisdiction? A Reply to Professor Freer*, 40 Emory L.J. 943, 961 n.91 (1991); Richard D. Freer, *Toward a Principled Statutory Approach to Supplemental Jurisdiction in Diversity of Citizenship Cases*, 74 Ind. L.J. 5, 6 (1998). The theory is that the omission of Rule 20 from the second set of subsection (b) exceptions might allow a group of plaintiffs to file an initial action naming only those among them who are totally diverse with the named defendants and then, once the court's original jurisdiction over that action is thus established, file an amended complaint joining the additional non-diverse plaintiffs pursuant to Rule 20 and under the supplemental jurisdiction.

While this issue need not be confronted in this case, petitioners submit

In sum, the grant of supplemental jurisdiction in § 1367(a) and (b) yields a consistent and purposeful meaning. Assuming a case that falls within the original jurisdiction of the district court, § 1367(a) confers a general grant of supplemental jurisdiction over other claims that constitute part of the same case or controversy, including such claims that involve joinder or intervention of additional parties.

---

that the argument rests upon an incorrect premise. When a plaintiff voluntarily amends the complaint to add additional parties, that amended complaint must itself support original jurisdiction (and, consequently, supplemental jurisdiction over any additional claims). *See Grupo Dataflux v. Atlas Global Group, L.P.*, 124 S. Ct. 1920, 1926 & n.5 (2004) (indicating that post-filing changes in parties can affect subject-matter jurisdiction); *Am. Fiber & Finishing, Inc. v. Tyco Healthcare Group, LP*, 362 F.3d 136, 141 (1st Cir. 2004) ("When [plaintiff] amended its complaint to configure its suit [to name a non-diverse defendant], complete diversity was destroyed just as surely as if it had sued [the non-diverse party] in the first instance. . . . The extra step obfuscates, but does not alter, the jurisdictional calculus."); *Estate of Alvarez v. Donaldson Co.*, 213 F.3d 993, 995 (7th Cir. 2000) (holding that, in adding defendants in an amended complaint, plaintiffs are required "to establish diversity as part of an amended complaint just as they did for the original complaint" (internal quotation marks omitted)); *Hensgens v. Deere & Co.*, 833 F.2d 1179, 1180-81 (5th Cir. 1987) ("Generally, jurisdiction is determined at the time the suit is filed. . . . However, addition of a nondiverse party will defeat jurisdiction."); *Ingram v. CSX Transp., Inc.*, 146 F.3d 858, 861-62 (11th Cir. 1998) (same in context of removal).

This principle closes the "gaping hole." If a plaintiff amends the complaint to add a non-diverse party, the analysis under § 1367 would never reach subsection (b), because the failure of complete diversity in the amended complaint would preclude original jurisdiction over any claim in the action, and the supplemental-jurisdiction analysis would never get beyond the threshold requirement of subsection (a) that there be a "civil action of which the district courts have original jurisdiction." Accordingly, there is no need for an exception in subsection (b) addressing the voluntary joinder of a non-diverse plaintiff.

This grant of supplemental jurisdiction is limited by § 1367(b), in cases where original jurisdiction rests solely on diversity of citizenship, to prevent plaintiffs from bringing a case into federal court under the diversity jurisdiction in two steps, where no federal jurisdiction would have existed under § 1332 if all appropriate parties had been included at the outset. Thus, the plaintiffs may not bring claims against newly added defendants, and newly added plaintiffs may not bring claims against new or existing defendants, where the resulting line-up of plaintiffs and defendants is inconsistent with the complete diversity on which jurisdiction under § 1332 depends. At the same time, defendants named in the complaint, having been haled into federal court under the diversity jurisdiction, are not thus restricted in their ability to assert the full power of the supplemental jurisdiction, to reach matters within the same case or controversy, up to the limits of joinder of claims and parties allowed under Rules 13, 14, 19, and 20 of the Rules of Civil Procedure.[16]

---

[16] Subsection (c) of § 1367 enumerates several categories of claims over which a district court may opt, as a matter of discretion, not to entertain under its supplemental jurisdiction. The purpose of subsection (c) is to "codif[y]" the scope of discretion afforded district courts in this area under the preexisting regime set out in *Gibbs*. *See* 383 U.S. at 726-27 (discussing discretionary power not to hear certain claims). Specifically, under subsection (c), a district court may decline to exercise supplemental jurisdiction over novel or complex state-law claims, claims that substantially predominate over the claims within the court's original jurisdiction, claims remaining after all claims within the original jurisdiction have been dismissed, and other claims raising "compelling" and "exceptional" considerations.

B. Under The Straightforward Reading Of § 1367, The District Court Had Supplemental Jurisdiction Over The Claims Of Beatriz's Family Members

Application of § 1367's provisions to this case is straightforward. This is a "civil action of which the district courts have original jurisdiction" for purposes of § 1367(a), because the complete-diversity requirement is satisfied, and the claim of the injured child, Beatriz, satisfies the $75,000 amount-in-controversy requirement. Based upon this "claim[] in the action within such original jurisdiction," subsection (a) authorizes "supplemental jurisdiction over all other claims that are so related to" it "that they form part of the same case or controversy under Article III of the United States Constitution." The claims of Beatriz's family members form part of the same case or controversy because they arise from the injury to Beatriz involving the tuna can — a single transaction or occurrence, one and the same "nucleus of operative fact." *Int'l College of Surgeons*, 522 U.S. at 164-65. Thus, the requirements of § 1367(a) for supplemental jurisdiction over the claims at issue are satisfied.

Because this is a "civil action of which the district courts have original jurisdiction founded solely on section 1332," 28 U.S.C. § 1367(b), the exceptions set out in subsection (b) must be evaluated. Those exceptions are facially inapplicable. The supplemental claims in this case are claims by parties joined as plaintiffs under Rule 20 against the defendant, and, most obviously, there is no exception in § 1367(b) to the grant of supplemental jurisdiction for claims brought by plaintiffs joined in that manner. *See supra* pp. 31-34. As importantly, § 1367 confers supplemental jurisdiction over the claims of Beatriz's family members because those parties and claims are fully compatible with the existence of complete diversity, and thus are not "inconsistent with the jurisdictional requirements of section 1332." Thus, even if the claims of Beatriz' family members

had fallen within one of the enumerated categories under subsection (b), which they do not, subsection (b) would still not have precluded the assertion of supplemental jurisdiction.[17]

II. ALTERNATIVE INTERPRETATIONS OF § 1367 DENYING SUPPLEMENTAL JURISDICTION ON THE FACTS OF THIS CASE CANNOT BE RECONCILED WITH THE WORDS OF THE STATUTE

Not only do the words of § 1367 have a clear and determinate meaning that confers supplemental jurisdiction over the related claims of completely diverse plaintiffs who fail the amount-in-controversy requirement (so long as at least one such plaintiff satisfies that requirement), but the text as written simply will not bear a contrary construction. This is borne out by consideration of the reasoning that has been relied upon in reaching a different result.

It is noteworthy, first, that the primary line of analysis that has been advanced in support of denying supplemental jurisdiction in a case like this one, has focused not on the exceptions provision, § 1367(b), but rather upon the affirmative grant of jurisdiction contained in § 1367(a). Indeed, to petitioners' knowledge, no reading of subsection (b) has been proposed that could conceivably bring a case such as this one within that subsection's exceptions.

The principal argument that has been advanced is that § 1367(a)'s requirement of a "civil action of which the district courts have original jurisdiction" is only satisfied, in

---

[17] None of the grounds set forth in § 1367(c) for discretionary refusal to exercise supplemental jurisdiction applies, and Star-Kist has never argued that it would be within the discretion of the district court to decline jurisdiction on that basis.

a diversity case, where there is original jurisdiction over *every claim* in the case as filed. *See* Pet App. 16a; *Trimble v. Asarco, Inc.*, 232 F.3d 946, 962 (8th Cir. 2000); *Meritcare Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214, 219-21 (3d Cir. 1999); *Leonhardt v. W. Sugar Co.*, 160 F.3d 631, 640-41 (10th Cir. 1998). Under such a reading, the presence of any claim in the complaint lacking an independent basis for diversity jurisdiction, separate from § 1367, would preclude any exercise of supplemental jurisdiction because there would be no "civil action" in the "original [federal] jurisdiction," as required for the application of § 1367(a).

This reading of subsection (a) is untenable for a variety of reasons. First, it would render the entirety of § 1367 largely superfluous in diversity cases, because, with regard to claims in the plaintiff's complaint, it would authorize supplemental jurisdiction only where it is not needed (because there is already an independent basis of jurisdiction for each claim). Second, such a reading is incompatible with the reference later in subsection (a) to "*claims* in the action within such original jurisdiction," as distinct from "other claims" in the case over which supplemental jurisdiction is exercised. 28 U.S.C. § 1367(a) (emphasis added). Third, the reading cannot be squared with *International College of Surgeons*, which expressly held that subsection (a) may be satisfied where there is a single jurisdictionally sufficient claim in the action. *See* 522 U.S. at 167. "The whole point of supplemental jurisdiction is to allow the district courts to exercise pendent jurisdiction over claims as to which original jurisdiction is lacking." *Id.*

Beyond these problems, this strange notion of what constitutes a "civil action" within the "original jurisdiction" affords no basis to distinguish between diversity and federal-question cases. Logically, the inclusion in either type of case of claims with no independent basis for federal-court jurisdiction would foreclose "original jurisdiction" under this reasoning. Unless it distinguishes between those two types of cases, the statute, under this reading, would fail to

accomplish its most commonly acknowledged objective, the abrogation of *Finley*. Accordingly, the First Circuit below, and the other circuits to adopt this construction of the statute, have relied principally on a theory first proposed by Professor James E. Pfander in an attempt to "produce *different* approaches in federal question and diversity litigation," notwithstanding that the text of subsection (a) does not distinguish between federal-question and diversity cases. James E. Pfander, *The Simmering Debate Over Supplemental Jurisdiction*, 2002 U. Ill. L. Rev. 1209, 1223 (2002) (emphasis added); *see also* James E. Pfander, *Supplemental Jurisdiction and Section 1367: The Case For A Sympathetic Textualism*, 148 U. Pa. L. Rev. 109, 128 (1999); Pet. App. 17a-18a; *accord Meritcare, Inc.*, 166 F.3d at 220 ("The organization of Section 1367 makes it clear that a distinction is to be made between a narrow approach to diversity cases, as contrasted with a more expansive scope for other sources of jurisdiction, such as federal question litigation."); *Leonhardt*, 160 F.3d at 640.

These courts rest their proposed distinction between diversity and federal-question cases on two lines of authority. First, they correctly observe that this Court's cases have required that, in diversity cases, diversity must be complete for original jurisdiction to attach to *any* claim in the action. Pet. App. 18a (citing *Schacht* for the proposition that a failure of total diversity destroys original jurisdiction over the whole action). Petitioners, of course, agree with this principle, which explains why § 1367 does not abrogate the complete-diversity requirement. *See supra* pp. 24-25.

Second, the court below, among others, purports to find in the law a distinct prerequisite to the existence of "original jurisdiction" in a diversity case — that every plaintiff separately satisfy the amount-in-controversy requirement. The only support offered for this view is a facially irrelevant line of cases involving the rules of aggregation in the amount-in-controversy analysis. Pet. App. 18a-19a; *accord Leonhardt*, 160 F.3d at 640; Pfander, *supra*, 148 U. Pa. L.

Rev. at 130-31. Those rules allow the aggregation of amounts in different claims by a plaintiff, but not the aggregation of amounts between different plaintiffs. *See* Pet. App. 18a-19a.

These aggregation principles simply have no bearing on the question whether there is "original jurisdiction" over a "civil action" where, in a completely diverse case, the claims of one party meet the amount-in-controversy, while the claims of other plaintiffs do not. The fact that this Court's pre-§ 1367 jurisprudence "prohibits multiple plaintiffs from combining their claims to clear the amount-in-controversy bar," Pet. App. 18a, says nothing about the original jurisdiction over the valid claim of a plaintiff whose own claim is sufficient. On this — the relevant question for purposes of construing subsection (a) of § 1367 — neither the First Circuit nor the other courts that have adopted its reading have offered any adequate explanation. Nor have they addressed the fact that *Zahn* and other cases have routinely recognized the existence of original jurisdiction over such claims by retaining the jurisdictionally valid claims and requiring the dismissal only of the insufficient claims. There simply appears to be no support for concluding, based on the fact that the complete-diversity principle survived the enactment of § 1367, that every plaintiff must also separately satisfy the jurisdictional minimum in order for supplemental jurisdiction to become available under subsection (a).[18]

---

[18] Professor Pfander is also incorrect in his assertion — which it appears no court has adopted — that his interpretation of the "original jurisdiction" requirement is supported by a purported distinction in the pre-*Finley* case law between the treatment of pendent-party jurisdiction in federal-question as contrasted with diversity cases. *See* Pfander, 148 U. Pa. L. Rev. at 129 n.79 ("It was broadly recognized that the pre-*Finley* federal-question doctrine of pendent jurisdiction did not apply to cases

In short, the First Circuit and the other courts that have agreed with its interpretation of § 1367 offer no basis whatever to suppose that "original jurisdiction" over a "civil action" is lacking in a case, like this one, where complete diversity is present and some plaintiffs but not others meet the amount-in-controversy requirement. Accordingly, there is no reason here to doubt that supplemental jurisdiction is triggered according to its terms, or that the related claims of Beatriz's family members are thus properly brought in federal court.

The First Circuit's analogy to 28 U.S.C. § 1441, the removal statute, offers no argument to the contrary. The First Circuit found that because "the Supreme Court has interpreted section 1441 to prohibit removal unless the entire action as it stands at the time of removal could have been filed in federal court in the first instance," the phrase "civil action of which the district courts have original jurisdiction," which appears in both § 1441 and § 1367, should be given a corresponding meaning in § 1367. Pet. App. 21a-22a. This argument proves too much, for if § 1367 really were read to allow supplemental jurisdiction only where all claims in a complaint are already within the federal court's jurisdiction, the statute would not, as intended, achieve the abrogation of *Finley*.

---

based on diversity of citizenship."). To the contrary, after *Gibbs*, the lower courts routinely asserted pendent-party jurisdiction over claims outside the courts' original jurisdiction in *both* federal-question and diversity cases. *See supra* pp. 5-7 & notes 1-3 (citing cases); Fortune, *supra*, 34 U. Pitt. L. Rev. at 1 ("The courts have . . . generally approved 'pendenting parties' in diversity cases . . . ."). It is true that *Zahn* placed this practice in doubt as to diversity cases in 1973. But, just two years later, *Aldinger* raised similar doubts about the use of the doctrine in federal-question cases. *See supra* p. 8.

Comparison with the language of § 1441 does not call for such an absurd reading. Section 1441 has quite naturally been construed in a manner that makes the plaintiff the master of his complaint, *Holmes Group, Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 831 (2002); *Caterpillar Inc. v. Williams*, 482 U.S. 386, 398-99 (1987), so that a defendant who wishes to remove a case must take the case as the plaintiff has pled it. Therefore, any case which cannot go forward intact in federal court, but, for lack of federal-court jurisdiction, could only be pursued there in part, must be left in state court. No similar concern is relevant under § 1367, where the question is whether there is a "civil action" within the district court's "original jurisdiction" to which the grant of supplemental jurisdiction can be applied.

As importantly, this Court has made clear that, as used in § 1441, a "civil action" is within the "original jurisdiction" of the federal court — and thus is removable — when the district court would have original jurisdiction over some claim in the case, so long as the remaining claims in the case fall within the requirements for supplemental jurisdiction under § 1367. *Int'l College of Surgeons*, 522 U.S. at 165-66.

The concept of a "civil action" within the "original jurisdiction" of the district court is thus used in an entirely different way in § 1441 than it is in § 1367. In § 1441, it is the statutory prerequisite for removal of a state court case to federal court, and is deemed satisfied whenever the entirety of a case falls within the jurisdiction of the federal court, even if that conclusion rests in part on exercise of supplemental jurisdiction. In contrast, in § 1367, a "civil action" within the district court's "original jurisdiction" is the predicate for any exercise of supplemental jurisdiction, and thus cannot include, as under § 1441, jurisdiction over supplemental claims or parties. Obviously it is impossible to equate the usage of "original jurisdiction" in § 1367, where it is the essential prerequisite to any assertion of supplemental jurisdiction, with the usage in § 1441, where it can be

established by relying upon supplemental jurisdiction conferred under § 1367.

Given the clarity of the text of § 1367, the only alternative ground for denying supplemental jurisdiction in this case is to ignore the unambiguous language of the statute in favor of the presumed subjective intent of the Congress. Any such departure from the plain meaning of a statutory text must satisfy the demanding doctrine of scrivener's error, which is limited to circumstances where the enactment as written would lead to absurd results. *See, e.g., W. Va. Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 99-100 (1991) (refusing to "permit our perception of the 'policy' of [a] statute to overcome its 'plain language'"); *accord Lamie v. United States Trustee*, 124 S. Ct. 1023, 1033-34 (2004) (rejecting argument that statute should be judicially corrected as a scrivener's error because the statute could be defended as a matter of policy as written); *Clinton v. City of New York*, 524 U.S. 417, 454-55 (1998) (Scalia, J., concurring in part and dissenting in part) (noting that statute as written must be "bizarre"). Absent such extraordinary circumstances, "[i]f Congress enacted into law something different from what it intended, then it should amend the statute to conform to its intent." *Lamie*, 124 S. Ct. at 1034.

The doctrine of scrivener's error is wholly inapplicable here. Not only are the results produced by the statute as written not absurd, but they make good sense as a matter of policy, history and legislative intent, as shown in Parts III and IV below.

III. THE NATURAL READING OF § 1367 PROMOTES JUDICIAL ECONOMY WHILE PRESERVING THE RULE OF COMPLETE DIVERSITY

In the absence of supplemental jurisdiction, parties to a single constitutional case or controversy involving multiple claims, some of which are not independently within the original jurisdiction of the federal courts, would face two undesirable alternatives. If such parties wished to exercise

their statutory privilege of having their federally cognizable claims tried in federal court, they would have to incur the additional costs of litigating the nonfederal claims separately in state court. Alternatively, such parties would be able to enjoy the convenience and economy of trying all related claims together only if they chose to forego the federal forum entirely.

Motivated by these efficiency concerns, courts developed the common-law doctrines of pendent and ancillary jurisdiction to enable parties to try together in the same federal lawsuit all related claims, provided that the matter as a whole was properly within the original jurisdiction of the federal courts. *See* Matasar, *supra*, 17 U.C. Davis L. Rev. at 110-14; *Gibbs*, 383 U.S. at 726 (explaining that the "justification" for the doctrine of pendent jurisdiction "lies in considerations of judicial economy, convenience and fairness to litigants"). In codifying these doctrines in § 1367, Congress, too, recognized that supplemental jurisdiction enables courts and litigants "to deal economically—in single rather than multiple litigation—with related matters" in situations in which Congress has provided for original federal jurisdiction over at least a portion of the controversy. *See* H.R. Rep. No. 101-734, at 28 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6860, 6874. Section 1367 furthers these goals through the broad grant of supplemental jurisdiction contained in subsection (a).

At the same time, the statutory scheme furthers a competing objective: preventing plaintiffs from using supplemental jurisdiction to circumvent the jurisdictional requirement of complete diversity. Cases that are admitted to federal court under the diversity jurisdiction are there not because of anything to do with the legal subject matter at issue, but only because of the alignment of parties as citizens of different states. With diversity of citizenship of the parties as the sole rationale for the court's jurisdiction, there is ample reason for concern that any grant of supplemental jurisdiction built upon § 1332 not be so broad as to stretch

the diversity jurisdiction beyond all recognition. The danger is that plaintiffs might combine the grant of jurisdiction under § 1332 with the supplemental jurisdiction under § 1367(a), to boot-strap into federal court controversies that lack diversity of citizenship between the disputing parties in any substantial sense. *See ALI Tentative Draft No. 2* at xvii ("The key lies in identifying just what sorts of supplemental claims must be excluded from supplemental jurisdiction in order to preserve the effect of the rule of complete diversity.").

This problem is illustrated in *Kroger*. In that case, a citizen of Iowa had filed suit against a citizen of Nebraska, who in turn had, pursuant to Rule 14(a) of the Federal Rules of Civil Procedure, impleaded as a third-party defendant another citizen of Iowa. The Iowa plaintiff then amended her complaint to assert claims against the Iowa third-party defendant. This Court held that the district court lacked jurisdiction over this supplemental claim, expressing the concern that permitting jurisdiction under such circumstances would permit parties to circumvent the rule of complete diversity:

> [I]t is clear that the [plaintiff] could not originally have brought suit in federal court naming [the defendant and the third-party defendant] as codefendants, since citizens of Iowa would have been on both sides of the litigation. Yet the identical lawsuit resulted when [the plaintiff] amended her complaint. Complete diversity was destroyed just as surely as if she had sued [the third-party defendant] initially.

Kroger, 437 U.S. at 374.

Indeed, concerns about circumvention of the complete-diversity requirement have long influenced the development of the doctrines of pendent and ancillary jurisdiction. Prior to *Gibbs*, the doctrines developed in such a way as to prohibit the joinder of non-diverse parties where doing so threatened to undermine the rule of complete diversity. *See*

Note, *Diversity Requirements in Multi-Party Litigation*, 58 Colum. L. Rev. 548 (1958) (surveying pre-*Gibbs* case law and concluding that the doctrine of ancillary jurisdiction is and ought to be applied in diversity actions in such a way as to prevent plaintiffs from circumventing the complete-diversity requirement). After the lower courts became more aggressive in their assertions of supplemental jurisdiction after *Gibbs*, commentators warned against the potential evisceration of the complete-diversity rule. *See* Fortune, *supra*, 34 U. Pitt. L. Rev. at 18; Bratton, *supra*, 11 San Diego L. Rev. at 313.

Accordingly, at the time Congress began considering the legislation that would become § 1367, it was widely accepted even by many supporters of a broad supplemental jurisdiction that concerns for judicial economy should yield to rules that prevented plaintiff evasion of the complete-diversity requirement. This concern was noted by the subcommittee of the Federal Courts Study Committee that initially proposed a supplemental-jurisdiction statute, *see Federal Courts Study Subcommittee Report*, *supra*, at 563-67, and by others involved in the process of drafting § 1367, *see supra* note 6; Mengler, *supra*, 1990 BYU L. Rev. at 286; H.R. Rep. No. 101-734, at 29 (1990) (noting goal of preventing plaintiffs from "evad[ing]" the requirement of complete diversity).

Notwithstanding the substantial concern and attention devoted to preserving the complete-diversity requirement before and during the formulation of the current language of § 1367, much of the resistance to the natural reading of the statute has resulted from a misplaced concern that a straightforward reading of the language would abrogate *Strawbridge*. *See, e.g.*, Pet. App. 27a-30a; Pfander, *supra*, 148 U. Pa. L. Rev. at 125. However, as shown in Part I(A) above, this concern is fundamentally unfounded, because § 1367 distinguishes sharply between cases in which total diversity is lacking, and cases where some but not all claims fall short of the amount in controversy. *See supra* pp. 24-25.

Further, in a case such as this one, where total diversity of citizenship exists and at least one plaintiff is asserting claims that satisfy the statutory amount-in-controversy requirement, the efficiency rationale for supplemental jurisdiction is presented in its starkest form. Where the facts of a single case or controversy are to be litigated in federal court because jurisdiction on that basis is undeniable, there is no reason why the smaller claims of other diverse parties, arising from the same operative facts, should not be resolved in the same proceeding.[19] The result of the natural reading of § 1367 is thus fully consistent with the twin objectives of enhancing efficiency and respecting the integrity of the complete-diversity limitations of § 1332.

IV. THE LEGISLATIVE HISTORY PROVIDES NO JUSTIFICATION FOR REWRITING § 1367 IN THE MANNER ADVOCATED BY RESPONDENT AND THE COURT BELOW

As explained above, the text of § 1367 is unambiguous with respect to the question presented in this case. Given the absence of ambiguity, there is no warrant to consider legislative history. *See, e.g., Bedroc Ltd. v. United States*, 124 S. Ct. 1587, 1595 n.8 (2004) (reaffirming "our longstanding precedents that permit resort to legislative history only when necessary to interpret ambiguous statutory text"). Therefore, the First Circuit's reliance upon the

---

[19] The American Law Institute, which has drafted proposed revisions to clarify the scope of § 1367, agrees that "it is sound jurisdictional policy to permit a [jurisdictionally sufficient] claim in a diversity action to support supplemental jurisdiction over claims by additional diverse parties. To provide otherwise would be to encourage duplicative litigation, since the withdrawal of supplemental jurisdiction over related claims of lesser amount is unlikely to dissuade a party litigating a claim worth more than $75,000 from proceeding in federal court after the lesser claim of a coplaintiff is dismissed." *ALI Tentative Draft No. 2* at 68.

legislative history in its departure from the plain meaning of § 1367 (Pet. App. 30a-32a) was erroneous.

In any event, the legislative history does not support the First Circuit's interpretation of the statute. As already noted, the principal goal behind Congress's enactment of § 1367 was to authorize the exercise of pendent and ancillary jurisdiction except where doing so would be inconsistent with, or would enable plaintiffs to circumvent, the rule of complete diversity. *See supra* pp. 43-46; *see also* H.R. Rep. No. 101-734, at 29 n.16 ("The net effect of subsection (b) is to implement the principal rationale of [*Kroger*]."). A reading of the statute that permits pendent-party jurisdiction over the claims of *diverse* co-plaintiffs furthers that legislative goal. *See* Charles Alan Wright & Mary Kay Kane, *Law of Federal Courts* 217 & n.33 (6th ed. 2002) ("[T]he legislative history of [§ 1367] shows that the purpose of § 1367(b) was to preserve the rule of complete diversity, but there is nothing to indicate that Congress cared about preserving the existing rules on jurisdictional amount.").

Nor should the Court conclude otherwise simply because of a sentence in the House Report stating that § 1367 "is not intended to affect the jurisdictional requirements of 28 U.S.C. § 1332 in diversity-only class actions, as those requirements were interpreted prior to" *Finley*. H.R. Rep. No. 101-734, at 28-29 & n.17 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6860, 6874-75 & n.17 (citing *Zahn* and *Ben Hur*). For a number of reasons, this lone sentence does not support respondent's reading of the statute.

First, the sentence refers to class actions, not to the joinder of additional named plaintiffs under Rule 20. By its terms, therefore, the statement has no direct application to the issue in this case. Second, the sentence lacks any analysis of the text and offers no coherent explanation of how the putative congressional intent relates to the language of the section.

Third, and most importantly, an undue focus on this unexplained and inexplicable (in view of the statute's clear

language) footnote ignores the basic history of the statute's development, of which a substantial record does exist. That record reveals that the Federal Court Study Committee's efforts aimed at codifying pendent and ancillary jurisdiction proceeded in tandem with a more radical proposal to abolish diversity jurisdiction, which the Committee regarded as substantially responsible for the congestion of the federal courts. *Report of the Federal Courts Study Committee*, *supra*, at 38-39 (1990). With its attention focused on the need for efficiency in the utilization of federal judicial resources, and aware that its abolition proposal would likely not prevail, in codifying the jurisdictional basis for pendent and ancillary jurisdiction, the Committee gave some attention to the functioning of supplemental jurisdiction in the diversity as well as the federal-question context. Recognizing the consequences of this Court's *Finley* decision in often confining the federal courts to piecemeal and inefficient litigation of matters coming before them, the Committee urged adoption of broad supplemental jurisdiction, consistent with the *Gibbs* "common nucleus of operative fact" standard. *Id.* at 47.

It is thus not surprising that the report of the subcommittee of the Federal Courts Study Committee that recommended § 1367 to Congress concluded, contrary to the House Report, that the language contained in a proposed draft of the statute "would overrule the Supreme Court's decision in *Zahn*." *Federal Courts Study Subcommittee Report*, *supra*, at 561 n.33. Indeed, the subcommittee endorsed that result. *See id.* ("From a policy standpoint, [*Zahn*] makes little sense, and we therefore recommend that Congress overrule it.").[20] While the language of the proposal was subsequently

---

[20] The text of the draft proposal is set forth in the subcommittee report. *See id.* at 567-68.

changed in some respects, the relevant final language of § 1367 is "strikingly similar" to the language on which the subcommittee opined, *Gibson v. Chrysler Corp.*, 261 F.3d 927, 937 (9th Cir. 2001), and nothing therein was revised in a manner that would effectuate the preservation of *Clark* or *Zahn*. The single footnote that has been focused upon as showing a purpose to preserve *Zahn* explains neither the why nor the how of this supposed sudden reversal of direction.

One explanation has been provided, though, by the commentary of law professors who played a role in drafting § 1367 and have acknowledged that the reference to *Zahn* was belatedly inserted into the House Report in an attempt to *modify* the enacted text rather than to explicate it. *See* Thomas D. Rowe, Jr. *et al.*, *Compounding or Creating Confusion about Supplemental Jurisdiction? A Reply to Professor Freer*, 40 Emory L.J. 943, 960 n.90 (1991) (explaining that the insertion of the sentence was an "attempt to correct" an "oversight" in the text of the statute); Thomas D. Rowe, Jr. *et al.*, *A Coda on Supplemental Jurisdiction*, 40 Emory L.J. 993, 1005-06 (1991) (noting that "[w]e frankly described the legislative history coverage as second-best to more explicit treatment in the statute," but nonetheless expressing "our expectation" that courts will follow the legislative history).[21] Accordingly, "the legitimacy of the so-called legislative history is highly suspect here because three of its drafters essentially admit that it was [a] *post-hoc* effort to repair what they (as opposed to Congress) thought to be an oversight." *Payne v. Goodyear Tire & Rubber Co.*, 229 F. Supp. 2d 43, 51 (D. Mass. 2002); *accord Rosmer v. Pfizer*

---

[21] The professors noted that this use of legislative history to "correct" the language of a statute "creates the delicious possibility that despite Justice Scalia's opposition to the use of legislative history, he will have to look to the history or conclude that section 1367 has wiped *Zahn* off the books." 40 Emory L.J. at 960 n.90.

Inc., 263 F.3d 110, 121 (4th Cir. 2001) ("In reading the clear language of the statute in the same way that the esteemed drafters of § 1367(a) do, we reach the conclusion they concede to be inescapable.").[22]

CONCLUSION

For the reasons set forth above, the decision of the court below should be reversed.

---

[22] Moreover, as the Fourth Circuit has observed, the inclusion of both *Zahn* and *Ben-Hur* in the same legislative history footnote, as cases that should be viewed as unaffected by § 1367, is internally inconsistent, since the essential textual rationalization for preserving *Zahn* involves reading Rule 23 into the enumerated exceptions in § 1367(b), which would simultaneously reverse *Ben-Hur*:

> In the same footnote where the House Committee Report approvingly cited *Zahn*, it also cited *Supreme Tribe of Ben-Hur v. Cauble*, 255 U.S. 356, 41 S.Ct. 383, 65 L.Ed. 673 (1921). In *Ben-Hur*, the Supreme Court held that in class actions, only the named plaintiffs must have complete diversity. In other words, absent class members may come from the same state as the opposing party so long as all named plaintiffs are diverse. Adding Rule 23 to § 1367(b)'s exceptions would have the effect of reversing the result in *Ben-Hur* even as it sustains the result in *Zahn*. Indeed, the House Report's admonition that both *Zahn* and *Ben-Hur* survive the enactment of § 1367 is simply impossible to square with the plain text of the statute.

Rosmer, 263 F.3d at 117 n.4.

Respectfully submitted,

FREDDIE PEREZ-GONZALEZ
FREDDIE PEREZ-GONZALES & ASSOC., P.S.C.
Home Mortgage Plaza
4th Floor, Suite 433
Hato Rey, PR 00918
(787) 751-4334

ROBERT H. KLONOFF
UNIVERSITY OF MISSOURI
KANSAS CITY SCHOOL OF LAW
500 East 52nd Street
Kansas City, MO 64110

DONALD B. AYER
(*Counsel of Record*)
MICHAEL S. FRIED
CHRISTIAN G. VERGONIS
JASON J. JARVIS
CHARLES T. KOTUBY, JR.
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
(202) 879-3939

Counsel for Respondents

December 6, 2004